

REMARKS

In response to the Office Action mailed on September 21, 2005, Applicants amended claims 27, 45-47, and 56, canceled claims 1-26, 55, 57-59, 61, and 62, and added new claims 63 and 64. Claims 27-54, 56, 60, and 63-64 are presented for examination.

The Examiner objected to the specification. Applicants amended the specification to obviate the objection, and therefore request reconsideration and withdrawal of the objection.

The Examiner objected to the title of the application. Applicants amended the title of the application to obviate the objection, and therefore request reconsideration and withdrawal of the objection.

The Examiner objected to the abstract. Applicants amended the abstract to obviate the objection, and therefore request reconsideration and withdrawal of the objection.

The Examiner objected to the claim 1. Applicants note that claim 1 is not currently pending in this application. It is believed that the Examiner intended for this objection to apply to claim 27. Applicants amended claim 27 to obviate the objection, and therefore request reconsideration and withdrawal of the objection.

The Examiner rejected claims 27-44, 46, 48-54, and 60 under 35 U.S.C. § 112, second paragraph as being incomplete for omitting essential elements.¹ The Examiner cited MPEP §2172.01 which states:

“[a] claim which omits matter disclosed to be essential to the invention as described in the specification... may be rejected under 35 U.S.C. §112, first paragraph as not enabling... such essential matter may include missing elements, steps or necessary structural cooperative relationships of elements described by the applicant(s) as necessary to practice the invention.”
(emphasis added)

¹ While the examiner rejected the claims 27-44, 46, 48-54, and 60 under 35 U.S.C. §112, second paragraph, it is believed that the Examiner intended to reject claims 27-44, 46, 48-54, and 60 under 35 U.S.C. §112, first paragraph, based on the Examiner's explanation of the reason for the rejection. If the Examiner did intend for this rejection to be based on 35 U.S.C. §112, second paragraph, this rejection should be withdrawn because the Examiner has not cited proper legal support for the rejection.

Thus, under MPEP §2172.01, the specification should describe the element as being essential or necessary. Applicants believe that the application as filed does not describe any particular subject matter as “essential or necessary.” Therefore, Applicants request reconsideration and withdrawal of this rejection.

The Examiner rejected claim 41 under 35 U.S.C. § 112, second paragraph as being indefinite. However, upon reading the application as originally filed, one of ordinary skill in the art would understand the subject matter of this claim. For example, an embodiment in which a p-ohmic contact layer is disposed between the layer of p-doped material and the layer of reflective material was disclosed in the application as originally filed, for example, at page 26, lines 17-20 and shown in FIG. 16. Therefore, this rejection should be withdrawn.

The Examiner rejected claims 27 and 55 under the doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/724,029 in view of Krames. Applicants request that this rejection be held in abeyance.

The Examiner rejected claim 27 and its dependent claims 28-54 and 60 under 35 U.S.C. §§102(e) and/or 103(a). Applicants amended claim 27 to include the limitations of previously pending claim 55 which was not rejected under 35 U.S.C. §102(e) or §103(a), and canceled claim 55. Applicants therefore request reconsideration and withdrawal of the rejection of claims 27-54 and 60.

The Examiner rejected claim 56 as being anticipated by Krames under 35 U.S.C. §102(e). Applicants amended claim 56 to include the limitations of its prior base claim (claim 27) and to remove the complex periodic pattern limitation. Therefore, Applicants request reconsideration and withdrawal of the rejection of claim 56. Claims 63 and 64 depend from claim 56 and should be patentable for at least the reasons claim 56 is patentable.

Applicants believe the application is in condition for allowance, which action is requested.

Enclosed is a check for excess claim fees. Please apply any other charges to deposit account 06-1050.

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Respectfully submitted,

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